IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 25TH AUGUST 2006 / 3RD BHADRA 1928

ST.Rev..No. 173 of 2004()

TA.685/2001 of S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

APPELLANT/RESPONDENT IN T.A.NO.685/2001

M/S.J.I.MORRISON (INDIA) LIMITED,
KURISUPALLY ROAD, ERNAKULAM.

BY ADV. SMT.K.LATHA

RESPONDENTS: APPELLANT IN T.A.NO.685/2001

THE STATE OF KERALA

BY SPL. G.P. SRI.V.V.ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ALONG WITH STRV NO.175/2004 ON 25/08/2006, THE COURT ON 25/08/2006 DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. Nos.173 & 175 of 2004

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Dated this the 25th day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

The two issues arising from the common order of the Tribunal are whether feeding bottle sold by the petitioner is "packing material" within the meaning of Notification SRO 405/1994 prescribed under Entry 91 of the First Schedule to the KGST Act and the alternate question that is, if item is found to be not packing material, whether it is a plastic item falling at the relevant time under Entry 101 of the First Schedule to the KGST Act.

2. We have heard counsel for the petitioner and the Special Government Pleader for the respondent. The Tribunal found that the item feeding bottle is not packing material and the same is assessable under Entry 104 as a product made of plastic. Counsel for the petitioner contended that under the notification SRO 405/1994 bottles made of glass or any other materials are brought within the scope of packing materials and packing cases as referred to in Entry 91 of the First Schedule to the KGST Act. According to counsel for the petitioner, bottle made of polycarbonate is also a bottle and therefore, it is a packing material within the meaning of the notification abovereferred. We are unable to accept this contention because bottle as a packing material is generally used for packing of a commodity in liquid form. It may be water, drug, perfume, oil, milk, soft drinks or the like.

However, nobody uses feeding bottle as a packing material. It is common knowledge that feeding bottle is used to feed milk and liquid food to babies and it is repeatedly used for feeding baby with the assistance of a nipple which is also sold along with the feeding bottle. The argument that feeding bottle also is bottle is correct but it is not intended for use as a packing material. Since it's purpose is not for packing, but for recurring use for feeding babies, it does not come under the notification. We, therefore, confirm the order of the Tribunal rejecting petitioner's claim that feeding bottle is bottle eligible for concessional rate of tax as a packing material under the above notification.

3. The next question is with regard to rate of tax on feeding bottle. The Assessing Officer without discussing the issue levied tax on the product treating it as a plastic item under Entry 101 of the First Schedule to the KGST Act. In first appeal, the petitioner produced a certificate to the effect that item is made of polycarbonate which is a food-grade material. The Tribunal without considering the matter in detail held that the item is assessable under Entry 101 of the First Schedule which provides for plastics and products of plastic and goods made of similar materials. There is no other entry in the First Schedule covering materials similar to one sold by the petitioner. Of course Entry 101 generally talks in all kind of synthetic materials, though articles made of polycarbonate is not specifically covered by it. The dictionary meaning of polycarbonate and plastic, both refer to polymeric substances. Of course if raw material out of which both

plastic and polycarbonate are made is substantially the same, it is quite possible that the item can be classified under articles made of plastic. However, we feel it may not be correct on our side to decide the issue without going into further details of the industry, the raw materials used and to consider the difference if any between plastic and polycarbonate. We therefore, feel the matter should be reconsidered by the Tribunal after calling for particulars of raw materials used in both the industry and the constituents of the products and to apply the appropriate rate of tax. In fact, similar industry engaged in production of feeding bottle for export in the Special Economic Zone is situated at Kakkanad and there will be no difficulty for the Department to collect information and help the Tribunal while deciding the matter. We, therefore, set aside the order of the Tribunal on this issue and direct the Tribunal to decide the issue on rate of tax afresh after hearing both sides. A final decision will be rendered by the Tribunal within a period of two months from the date of production of copy of this judgment.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated